



**U.S. Department of Justice**

*United States Attorney  
Eastern District of New York*

EAG/NS/MCM  
F. #2019R00029

*271 Cadman Plaza East  
Brooklyn, New York 11201*

January 25, 2021

By ECF

The Honorable Ann M. Donnelly  
United States District Judge  
United States District Court  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, New York 11201

Re: United States v. Robert Sylvester Kelly  
Criminal Docket No. 19-286 (S-3) (AMD)

Dear Judge Donnelly:

The government respectfully submits this letter (i) in response to the defendant's motion to compel the government to immediately produce discovery material, and (ii) to request that the Court schedule a status conference in the above-referenced matter.

As an initial matter, the government understands that the defendant is referring to the production of material pursuant to 18 U.S.C. § 3500 ("3500 Material") and not material discoverable under Rule 16 of the Federal Rules of Criminal Procedure. While the government's production of 3500 Material is due to the defendant only "after the witness is called by the United States," 18 U.S.C. § 3500, the government's practice is to provide such materials in advance of trial. With respect to the 3500 Material in this case, the government has repeatedly advised defense counsel that it would provide those materials well in advance of trial, but did not indicate to defense counsel that it would produce such materials 90 days in advance of trial. Last week, the government alerted the defense by email that it planned to produce the first batch of 3500 Material on February 5, 2021, which is in less than two weeks from now and more than eight weeks prior to jury selection.<sup>1</sup> The 3500 Material that the

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<sup>1</sup> In advance of the production, the government intends to file a motion that such 3500 Material be subject to the terms of a protective order.

government intends to produce on February 5, 2021 includes, among other items, written reports and grand jury testimony of the non-law enforcement witnesses it may call at trial.<sup>2</sup>

In addition, the government respectfully requests that the Court schedule a status conference to address the viability of the current trial date in light of the ongoing pandemic and, assuming the trial is proceeding as scheduled, whether the government should arrange for the defendant to be transferred to the District in order to be present for the distribution of jury questionnaires beginning on March 15, 2021. The government has advised the defense of its plan to initiate the transfer of the defendant to the District, but the defense has indicated that doing so will impede their ability to prepare for trial.

Respectfully submitted,

SETH D. DUCHARME  
Acting United States Attorney

By: /s/  
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cc: Clerk of the Court (AMD) (by ECF)  
All Defense Counsel (by ECF)

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<sup>2</sup> The government is continuing its investigation and reserves the right to add additional witnesses. As the government identifies additional witnesses, the government will supplement its production of 3500 Material.